



**BURLINGTON  
ENVIRONMENTAL**

July 6, 1993

Via Facsimile and U.S. Mail

Ms. Stephanie Delaney  
Law Clerk  
Attorney General's Office  
Department of Ecology Division  
629 Woodland Square Loop S.E.  
4th Floor  
Lacey, Washington 98504-0117

WAD 2917  
FF# 3c  
7-6-93

**RECEIVED**  
JUL 08 1993  
RCRA PERMITS SECTION

**FILE COPY**

Re: Draft Stipulated Agreement and Order of Dismissal  
PCHB Appeal No. 92-166 regarding Burlington  
Facitily at Pier 91

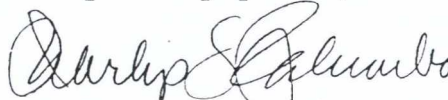
Dear Ms. Delaney:

I am sending by facsimile the draft Stipulated Agreement and Order of Dismissal prepared by Burlington with respect to the referenced appeal to the Pollution Control Hearings Board. Despite the Board's order of dismissal entered June 14, Doug Brown has asked that we proceed with drafting a settlement agreement in the event the Board rules on Burlington's motion for reconsideration and reinstates the appeal process. We are anticipating a draft of the permit Addendum from Mr. Brown this week.

Please review this draft and let me know how you wish to proceed. If the Board does not reinstate the appeal, we should probably discuss a different format for the terms of settlement that are not contained in the proposed permit Addendum. I will be on vacation from July 9 through July 18. I will be available by phone and fax to complete negotiations and settlement documents. My phone number (which also serves as a fax number) will be (303) 926-2138 during this time period.

Thank you for your attention to this matter.

Very truly yours,

  
Marlys S. Palumbo  
Consulting Attorney

Enclosure

cc: Mike Brandeberry w/enc.  
Keith Lund w/enc.  
Doug Brown, Ecology via facsimile

USEPA RCRA



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cc: Doug Hotchkiss, Port of Seattle  
Jay Manning, Ecology, AG's Office  
Gaylen Tritt, Ecology NWRO  
CARLIE SIKORSKI, EPA REGION 10

Draft dated 7/7/93

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

BURLINGTON ENVIRONMENTAL INC.,	)	
	)	
Appellant,	)	PCHB No. 92-166
v.	)	
	)	
STATE OF WASHINGTON,	)	STIPULATED AGREEMENT
DEPARTMENT OF ECOLOGY,	)	AND ORDER OF DISMISSAL
	)	
Respondent.	)	
_____	)	

I. STIPULATED AGREEMENT

COME NOW the Washington State Department of Ecology (Ecology) and Burlington Environmental Inc. (Burlington), and hereby stipulate to a settlement of all state-only issues which are the subject of the above-captioned appeal. In order to avoid future litigation and to ensure compliance with Chapter 70.105D RCW and RCRA, 42 U.S.C. Section 6901, Ecology and Burlington agree to an order of dismissal of this appeal on the following terms and conditions.

1. Burlington operates a dangerous waste treatment and storage facility at Pier 91 located in Seattle, Washington, on real property owned by the Port of Seattle.

2. On August 26, 1992, the RCRA Final Facility Permit No. WAD 000812917 for the Storage and Treatment of Dangerous Waste became effective for the Burlington Pier 91 facility in accordance with applicable provisions of the Hazardous



Waste Management Act, Ch. 70.105 RCW and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984. This permit was issued under signature by Ecology and the U. S. Environmental Protection Agency, dated July 22, 1992.

3. On August 21, 1992, Burlington appealed certain state-only issues in the permit to the Pollution Control Hearings Board (PCHB).

4. The specific provisions of the permit appealed by Burlington were: (a) the definition of "facility" contained in the permit; (b) required use of Washington State Accredited Laboratory for waste analysis (Permit Section II.A.6.a.ii); (c) required PCB analysis of each incoming shipment of waste to the facility (Permit Section II.A.12); (d) ignitability testing requirements (Permit Section II.A.16); (e) required maintenance of certain records at the facility (Permit Section II.C.1.d.v.); (f) certain requirements for clean closure of the facility (Permit Section II.D.7); (g) requirements and scheduling for construction of portions of the permitted facility (Permit Section IV.B.1); and (h) general facility compliance requirements (Permit Section IV.C.4.).

5. The parties have reached settlement on all of the foregoing issues on appeal. With respect to issue (a) above

relating to the definition of "facility" for purposes of the permit, EPA and Ecology have provided clarification in a separate letter to Burlington a true and correct copy of which is attached hereto as Exhibit A and incorporated herein by this reference. Burlington and Ecology have agreed upon final revisions to the permit conditions identified as issues (b), (c), (d) (e), (f), (g), and (h) above. These final revisions to the permit conditions have been set forth in the Addendum to the Permit for the Storage and Treatment of Dangerous Waste dated \_\_\_\_\_, 1993, a true and correct copy of which is attached hereto as Exhibit B and incorporated herein by this reference (the \_\_\_\_\_, 1993 Addendum).

6. With respect to issue (f) (Permit Condition II.D.7) above, Burlington and Ecology have agreed that implementation by Burlington of the approved closure plan, Attachment HH and LL to the permit, can achieve the clean closure standards of Permit Condition II.D.7. Permit Condition II.D.8 specifies that sampling and analysis for the purposes of closure shall be in accordance with Attachments HH and LL. Additional sampling and analysis for all waste constituents listed in WAC 173-303-9905 is not required by Permit Condition II.D.7. However, pursuant to WAC 173-303-830(3)(a)(ii), (v) and -610(3)(b)(iv), Ecology may require modification of the closure plan in the event of

new information; changes in facility design, operations or expected year of closure; or unexpected events at the time of closure. Two examples of instances which are sufficient cause for Ecology to require modification of the closure plan are specified in Permit Condition II.D.8.

7. The \_\_\_\_\_, 1993 Addendum shall be incorporated as part of the Final Part Permit for the Pier 91 Facility upon the signing of the Order of Dismissal contained herein by the PCHB. The revisions contained the \_\_\_\_\_, 1993 Addendum shall become effective and enforceable seven (7) calendar days from the date of the Order of Dismissal herein.

8. The Stipulation of Partial Stay and Proposed Partial Settlement, effective November 6, 1992, with respect to any condition which remains the subject of this appeal and which is contained in the Final Part B Permit, shall have no further force or effect as of the effective date of the \_\_\_\_\_, 1993 Addendum as established in the Order of Dismissal herein.

9. Each undersigned representative of the parties to this Stipulated Agreement and Order of Dismissal certify that he/she is fully authorized to enter into the terms and conditions of this Stipulated Agreement and to bind legally the parties to this document.

**BURLINGTON ENVIRONMENTAL INC.**

By \_\_\_\_\_  
Mike E. Brandeberry  
Senior Vice President  
Law and Governmental Affairs

Date \_\_\_\_\_

**STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY**

\_\_\_\_\_  
Gerald Lenssen  
Supervisor, Hazardous Waste Permits

Date \_\_\_\_\_

**KENNETH O. EIKENBERRY  
Attorney General**

\_\_\_\_\_  
Jay J. Manning  
Senior Assistant Attorney General  
for Department of Ecology

Date \_\_\_\_\_



## II. ORDER OF DISMISSAL

The PCHB having reviewed the foregoing Stipulated Agreement and the files and pleadings herein, and it appearing that the parties have reached final settlement of all issues which are the subject of this appeal and the Stipulation of Partial Stay and Proposed Partial Settlement effective November 6, 1992, it is hereby Ordered:

That the foregoing Stipulated Agreement is entered, the issues raised by Burlington's appeal are hereby fully resolved and not subject to further action under this proceeding; the revisions contained in the Addendum attached hereto as Exhibit B shall become effective seven (7) calendar days from the effective date of this Order of Dismissal; and the Partial Stay entered by this Board effective November 6, 1992 is lifted and shall have no further force or effect.

Dated this \_\_\_\_ day of July, 1993.

POLLUTION CONTROL HEARINGS BOARD

\_\_\_\_\_  
Harold S. Zimmerman, Chairman

\_\_\_\_\_  
Annette S. McGee, Member

\_\_\_\_\_  
Robert V. Jensen, Attorney Member